IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 149 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NARESHBHAI BALVANTBHAI VORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 149 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR SAMIR DAVE, AGP for Respondents No. 1 to 3

MS PJ DAVAWALA, Addl. Central Govt. Standing Counsel for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/04/2002

ORAL JUDGEMENT

1. By means of filing this petition the petitioner has challenged the impugned detention order dated 11-7-2000 passed by the respondent no. 2 in exercise of power conferred under Section 3 (2) of the Prevention of

Black Marketing and Maintenance of Suppies of Essential Commodities Act, 1980.

2. The impugned detention order dated 11-7-2000 has been passed against the petitioner by the respondent no.2. and he was detained on 2-1-2002 and was kept at Sabarmati Central Jail, Ahmedabad. On the same day i.e. 2-1-2002 he has made a representation to the respondent no. 2, detaining authority which was forwarded for approval to concerned authorities of the State Government.

3. I have heard Mr. H.R. Prajapati learned counsel for the petitioner, Mr. Samir Dave, learned A.G.P. for the respondents no. 1 to 3 and Mrs. P.J. Davawala, learned Addl. Central Govt. Standing Counsel for the respondent no. 2. Affidvit-in-reply filed by Dy. Secretary, Govt. of Gujarat, Food, Civil Supplies and Consumer Affairs Department on behalf of the respondent no. 1 and couter affidavit filed by Under Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution Department, New Delhi on behalf of the respodnent no.4 are taken on record.

4. Learned counsel for the petitioner has drawn my documents towards the documents which are produced at Page Nos.16, 22, 23, 25, 28, 29, 34, 39, 40, 154, 157, 158, 165, 171, 180, 183, 186, 187 to 205, 251 to 272, 305, 356 to 369, 444 and 445 and has argued that these documents have been not supplied by the authority though demanded by the petitioner by way of representation dated 2-1-2002 to the District Magistrate, Ahmedabad. He has submitted that by way of the presentation dated 2-1-2002 the petittioner has demanded certain documents which were relied upon and considered by the authority while passing the impugned order of detention. He has further argued that pursuant to the representation dated 2-1-2002 the respondents no. 2 has supplied some of the documents, however, the same are totally illegible. He has shown the copies of those documents to the Court. In support of his arguments, he has relied on the decision of this Court reported in 1991 (2) G.L.R. 753, wherein it has been observed as under :

"On perusing the documents, it appears that the document at page 195 is the receipt issued by "Gujarat Rajya Nagarik Purvatha Nigam Ltd., which is a vital document on which reliance is placed by the detaining authority. Looking to the rubber stamp, it appears that it is illegible and the

name of the payer on which the rubber stamp is applied, and the contents of the said rubber stamp are not legible. Learned A.P.P. appearing on behalf of the detaining authority was shown the document at page 195 and he fairly admitted that the said document is not legible. In view of this position, the detaining authority failed to supply legible copy of the said relevant document to the detenue for making an effective representation which has infrigned the detenu's right under Article 22 (5) of the Constitutition."

5. Learned counsel for the petitioner has taken me to the affidavit-in-reply filed by the detaining authority i.e. the District Magistrate, Ahmedabad, which is at page 56 more particularly para 18, which reads as under :

"I say and submit that all the inquiry papers in respect of Atlas Petro Chemicals as well as other firms are taken into consideration before passing the order of detention and all the papers relevant to the detenue were supplied to the detenue and therefore, it cannot be said that al the papers have not been taken into consideration and all the papers have not been supplied to the petitioner."

6. Learned counsel for the petitioner also submitted that from para 18 of the affidavit filed on behalf of the respondent no. 2, it is crystal clear that all the inquiry papers of Atlas Petro Chemicals and other firms are taken into consideration before passing the order of detention. He has further argued that non-supply of documents relied upon by the detaining authority and illegibility of the documents supplied made the impugned detention order ivitiated, illegal and bad in law and hence the impugned detention order requires to be quashed and set aside.

7. I have gone through the above referred documents which were shown to me as also para 18 of the affidavit filed on behalf of the detaining authority and also the documents. It is established that the above referred documents supplied to the petitioner are not legible which has not been denied by the learned A.G.P. after verifying the same. It is also established from para 18 of the affidavit of the respondent no. 2 that all the inquiry papers in respect of Atlas Petro Chemicals as well as other firms are taken into consideration before

passing the order of detention and all the papers relevant to the detenu were supplied to the detenu petitioner. Certain documents have not been supplied to the petitioner at the time of passing and executing the impugned detention order though copies of the same have been demanded by the petitioner vide representation dated 2-1-2002 and though above referred documents which are supplied by the respondents the same are not legible. Therefore, the impugned order is vitiated and bad in law and hence the same deserves to be quashed and set aside.

8. In view of the above discussion, this petition is allowed and the impugned detention order dated 11-7-2000 passed against the present petitioner - detenu is quashed and set aside. The petitioner - detenu Nareshbhai Balvantbhai Vora, is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute, with no order as to costs. Direct Service is permitted.

(R.P. Dholakia, J.)
/JVSatwara/